Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6000

March 20, 2002

Notice

Attached is the following item:

Summary:

On October 26, 2001, President Bush signed into law H.R. 3162, the USA Patriot Act, which contains strong measures to prevent, detect and prosecute terrorism and international money laundering. The Act is far-reaching in scope, covering a broad range of financial activities and institutions. The attached summary highlights certain aspects of the new Act applicable to thrift operations.

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OFFICE OF THRIFT SUPERVISION
STAFF SUMMARY OF USA PATRIOT ACT

On October 26, 2001, the President signed H.R. 3162, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, ("USA Patriot Act") Pub. L. No. 107-56, 115 Stat. 272. It contains strong measures to prevent, detect, and prosecute terrorism and international money laundering. The Act is far-reaching in scope, covering a broad range of financial activities and institutions.

The provisions affecting banking organizations are generally incorporated as amendments to the Bank Secrecy Act (BSA). The Act, whose coverage extends beyond insured depository institutions, provides the statutory groundwork for new filing and reporting obligations for banks and thrifts. It also requires certain additional due diligence and recordkeeping practices, especially in the area of private banking and foreign correspondent accounts. Some requirements take effect without the issuance of regulations. The U.S. Department of the Treasury, in consultation with OTS and the other federal financial institutions regulators, will implement other provisions through new or revised regulations.

All OTS regulated institutions should ensure that their compliance staffs carefully review the Act and prepare to implement its provisions within the appropriate timeframes. Institutions should be alert to further developments in this area. OTS staff will continue to work closely with Treasury, other federal regulators, financial institutions, and law enforcement in our joint efforts to implement Congressional goals and to provide additional guidance to the industry as it becomes available.

We have divided the sections of the Act into three groups. The first group describes sections that are applicable to all thrift institutions and are effective either immediately or in the very near term. The second group describes new enhanced due diligence procedures for those institutions that engage in private

banking (including trust activities) or engage in transactions with foreign financial institutions. The third group details other provisions of the Act that may be applicable to your institution.

OTS regulated institutions are urged to distribute this summary to appropriate employees and review their current Bank Secrecy Act policies and procedures to insure compliance with the Act. If you have any questions about this summary or other Bank Secrecy Act matters please contact your regional representative or John J. Davidson, Esq., Regulatory Analyst for Bank Secrecy Act Compliance at (202) 906-7976.

Group 1: Provisions That Affect All Thrift Organizations

This section of the guidance will briefly describe certain sections of the Act that Affect every institution. Many of these provisions simply restate current regulations. Other provisions, however, will require thrifts to review their overall BSA policies and procedures and make the appropriate modifications. As noted under each section, most of these provisions have either already become effective or will within the next six months.

A. Availability of Bank Records
(31 U.S.C. 5318(k); Act section 319(b))
Effective Date: December 25, 2001

This section requires a covered financial institution, upon request of the appropriate federal banking agency, to produce records relating to its anti-money laundering compliance or its customers. The thrift must produce such records within 120 hours of the request.

B. Anti-Money Laundering Record Considered in Applications
(12 U.S.C. 1828(c) and 1842(c); Act section 327)
Effective for applications submitted after December 31, 2001

The Act amends the Bank Holding Company Act and the Federal Deposit Insurance Act to require that, with respect to any application submitted under the applicable provisions of those laws, OTS take into consideration the effectiveness of the applicant's anti-money laundering program, including efforts at overseas branches.

C. Clarification of Safe Harbor; Disclosure in Employment References
(31 U.S.C. 5318(g); 12 U.S.C. 1828(w); Act sections 351 and 355)
Effective immediately

Current law protects financial institutions from civil liability for reporting suspicious activity. The Act clarifies the "safe harbor" provision by stating that a voluntary disclosure by a thrift of any possible violation of law or regulation to a government agency receives protection from civil liability. The Act does not apply if a government entity brings an action against the institution.

Financial institutions and their employees are currently prohibited from disclosing that they have filed a suspicious activity report (SAR). The Act amends current law to extend that prohibition to disclosure by any federal, state, or local government employee, except as necessary to fulfill that employee's official duties.

The Act amends the prohibition on disclosure of SARs and the safe harbor for liability. A financial institution may disclose reported suspicious information about an individual in a written employment reference or a written termination notice provided to a self-regulatory agency. While a financial institution may disclose the information under such limited circumstances, they may not disclose the fact that they filed a SAR.

The Act also amends the Federal Deposit Insurance Act (12 U.S.C. 1828) to allow insured depository institutions and uninsured branches or agencies of foreign banks to disclose suspicions of illegal activity (but not the fact that a SAR was filed) to other such institutions in written employment references for institution-affiliated parties. The Act does not impose any affirmative duty to make such disclosures.

However, an institution and its agents may be civilly liable for any disclosure that is "made with malicious intent."

D. Government and Financial Institution Information Sharing
(Act section 314)
Effective Date: Regulations to be issued by February 23, 2002

Treasury published proposed regulations on March 4, 2002, to encourage further cooperation among financial institutions, regulatory authorities, and law enforcement, for the purpose of sharing information about persons and entities engaged in, or suspected of engaging in, terrorist acts or money laundering activities. The regulations may require financial institutions to designate points of contact for information sharing and account monitoring, and to establish procedures for protecting information.

Effective immediately, financial institutions may, after giving notice to Treasury, share among themselves and with financial trade associations information about persons and entities engaged in, or suspected of engaging in, terrorist acts or money laundering activities. The Act provides that such sharing generally will not constitute a privacy violation of the applicable provisions of the Gramm-Leach-Bliley Act.

E. Anti-Money Laundering Program Requirement
(31 U.S.C. 5318(g); Act section 352)
Effective Date: April 24, 2002

The Act imposes an anti-money laundering program requirement on all financial institutions. The program must include components similar to those found in OTS's rules at 12 CFR 563.177. The OTS will issue further guidance in the event that future Treasury regulations result in any new requirements.

Group 2: Enhanced Due Diligence for Private Banking and Foreign Correspondent Accounts

This section of the summary discusses three sections of the Act that significantly affect any thrift institution involved in private banking or that maintains correspondent accounts for non-US financial institutions. OTS strongly urges any thrift that currently engages in these lines of business or that contemplates establishing these types of activities to carefully and thoroughly review the enhanced due

diligence requirements. Once these requirements are finalized, agency examination procedures will conform to new regulations.

A. Due Diligence for Private Banking and Correspondent Accounts
(31 U.S.C. 5318(i); Act section 312)
Effective Date: Regulations to be proposed by April 24, 2002; whether or not regulations are issued, provision is effective on July 23, 2002

General Due Diligence. The Act requires due diligence by all domestic financial institutions that maintain, administer, or manage private banking accounts or correspondent accounts in the United States for "non-United States persons." While the Act does not define this term, its Congressionally intended usage appears to include an individual residing outside the U.S. (even if a U.S. citizen) or an entity located outside the U.S. Clarification of this term should be expected in implementing regulations. With respect to all private banking and correspondent accounts, U.S. institutions must have "appropriate, specific, and, where necessary, enhanced, due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts." The Act directs Treasury, in consultation with OTS and the other Federal functional regulators, to issue regulations that clarify this general requirement. Also, the Act amends BSA regulations to allow for civil money penalties of up to $1 million per day for violation of the new enhanced due diligence requirements for private banking and correspondent accounts.

Private Banking Account Minimum Due Diligence Standards. The Act specifies minimum standards for private banking accounts, defined as accounts with minimum deposits of funds or other assets of $1 million that are assigned to or managed by a person who acts as a liaison between a financial institution and the beneficial owner(s). For all private banking accounts maintained by or on behalf of non-United States persons, the financial institution must report suspicious transactions and, at a minimum, keep records of: (1) the names of all nominal and beneficial owners, and (2) the source of funds deposited in those accounts.

For any private banking account requested or maintained by or on behalf of a senior political figure or his or her immediate family members or close associates, the financial institution must conduct enhanced scrutiny of the account to detect any transactions that may involve proceeds of foreign corruption. These

requirements are in accordance with current OTS guidance. See, CEO Memo #136, "Guidance on Enhanced Scrutiny for Transactions That May Involve the Proceeds of Foreign Official Corruption." (February 5, 2001.)

While the Act does list certain minimum customer due diligence standards for private banking, Treasury, in consultation with the federal banking agencies, may issue additional regulations in this area. Independent of the Act's thresholds, OTS has generally expected anti-money laundering compliance programs to appropriately cover private banking operations.

Additional Standards for Certain Correspondent Accounts. The Act requires additional measures for correspondent accounts of foreign banks that either are licensed by particular jurisdictions or operate under offshore banking licenses. The particular jurisdictions specified by the Act are (1) jurisdictions designated by intergovernmental groups (such as the Financial Action Task Force) as non-cooperative with international anti-money laundering standards, and (2) jurisdictions designated by Treasury as warranting special measures due to money laundering concerns.

For correspondent accounts of foreign banks operating under the licenses described above, a U.S. financial institution has the following additional obligations:

- If shares of the correspondent foreign bank are not publicly traded, the U.S. financial institution must take reasonable steps to identify each of the owners of the foreign bank and the nature and extent of each owner's interest.
- The U.S. financial institution must take reasonable steps to conduct enhanced scrutiny of the correspondent account to identify suspicious transactions.
- The U.S. financial institution must take reasonable steps to ascertain whether the correspondent foreign bank has correspondent banking relationships with other foreign banks and, if so, the U.S. financial institution must identify such other banks and conduct general due diligence (as described above) with respect to them.

The Act sets forth only minimum requirements for the "enhanced scrutiny" required for these accounts, and does not define "reasonable steps." Future Treasury regulations should provide additional guidance.

Thrifts must also readily supply certain information about its foreign correspondent account customers to law enforcement upon receipt of a subpoena. The Act provides that Treasury or the U.S. Attorney General may issue a subpoena or summons to any foreign bank with a correspondent account in the United States and request records relating to that account, including records maintained abroad about deposits into the foreign bank. To facilitate this process, a covered financial institution that has a correspondent account for a foreign bank must maintain in the United States:

- Records that identify the owners of the foreign bank, and
- The name and address of a person in the United States who is authorized to accept service of legal process on behalf of the foreign bank. This means that the foreign bank must designate an agent for service of process.

The covered financial institution must produce the records described above within seven days of receipt of a written request of a law enforcement officer.

Treasury or the U.S. Attorney General may, by written notice, direct a covered financial institution to terminate its relationship with a foreign correspondent bank that has failed to comply with a subpoena or summons or has failed to initiate proceedings to contest a subpoena or summons. If the covered financial institution fails to terminate the correspondent relationship within 10 days of receipt of notice, it could be subject to a civil money penalty of up to $10,000 per day.

B. Prohibition on U.S. Correspondent Accounts with Shell Banks
(31 U.S.C. 5318(j); Act section 313)
Effective Date: December 25, 2001

The Act prohibits covered financial institutions from establishing, maintaining, administering, or managing correspondent accounts with "shell banks," which are foreign banks that have no physical presence in any jurisdiction. An exception, however, permits covered financial institutions to maintain

correspondent accounts with shell banks that meet certain criteria. Under the criteria, the shell bank must be affiliated with a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or in another jurisdiction, and the shell bank must be subject to supervision by the banking authority that regulates the affiliated entity.

The Act also provides that covered financial institutions must take "reasonable steps" to ensure that accounts for foreign banks are not used to indirectly provide banking services to shell banks. Treasury has already provided interim guidance on the steps necessary to comply with this provision and includes a certification as a means for meeting their obligation. 66 FR 59342 (November 27, 2001). All foreign banks that maintain a correspondent account will need to certify that they do not offer banking services to a "shell bank."

C. Forfeiture of Funds in U.S. Interbank Accounts
(18 U.S.C. 981(k); Act section 319)
Effective immediately

The Act expands the circumstances under which funds in a U.S. interbank account may be subject to forfeiture. If a deposit of funds in a foreign bank outside of the United States is subject to forfeiture, and the foreign bank maintains an interbank account at a covered financial institution, U.S. law enforcement can seize the funds in the U.S. account as a substitute for the foreign deposit. Law enforcement is not required to trace the funds seized in the United States to the deposit abroad.

Group 3: Provisions of General Interest and that are not Effective Immediately or in the Near Term

The sections included in this group are of general interest to all thrift organizations. Some of the provisions discussed are simply informational while others may result in additional regulatory requirements.

A. Efficient Use of Currency Transaction Reports
(Act Section 366)
Report required by October 25, 2002

The Act directs Treasury to review the currency transaction reporting (CTR) system to make it more efficient, possibly by expanding the use of exemptions to reduce the volume of reports. OTS strongly supports appropriate use of CTR exemptions. We are committed to assisting thrifts in efficiently using the CTR system.

B. "Special Measures" for Certain Jurisdictions, Financial Institutions, International Transactions, and Accounts (31 U.S.C. 5318A; Act section 311)
Effective Date: Determined by future regulation

Treasury has broad regulatory authority to require financial institutions to perform additional recordkeeping and reporting with respect to particular financial institutions operating outside the United States, institutions in particular jurisdictions, types of accounts, and types of transactions, if Treasury determines that such institutions, jurisdictions, accounts, or transactions are of "primary money laundering concern." Treasury must consult with appropriate federal banking agencies to determine whether to impose special measures. Treasury may impose these measures by regulation or by order; however, any measure other than a regulation must expire within 120 days.

In general, the types of measures contemplated by this provision are maintenance of records and filing of reports with information about transactions, participants in transactions, and beneficial owners of funds involved in transactions. In addition, special measures could require due diligence with respect to the ownership of payable-through accounts and maintenance of information about correspondent bank customers that have access to correspondent accounts.

The Act requires Treasury, in consultation with certain other regulators, to issue regulations on the application of the term "account" to non-banks. Treasury is also required to define "beneficial ownership" and other terms used in this section, as appropriate.

C. Standards for Verification of Customer Identification
(31 U.S.C. 5318(l); Act section 326)
Effective Date: Regulations to be effective by October 25, 2002

The Act requires Treasury to issue regulations for financial institutions setting forth minimum standards for customer identification at account opening. The regulations will require verification of customer identification, maintenance of records of verification, and comparison of identification with government lists of known or suspected terrorists. OTS will actively provide input on the proposed customer identification requirements.

D. Filing of SARs by Securities Brokers and Dealers
(Act section 356)
Effective Date: Determined by future regulation

The Act requires Treasury, in consultation with the Federal Reserve Board and the Securities and Exchange Commission, to issue regulations requiring registered securities brokers and dealers to file SARs. The proposed regulations were published on December 31, 2001, and must be finalized by July 1, 2002.

E. Secure Filing Network
(Act section 362)
Effective Date: Network to be operational by July 23, 2002

The Act directs Treasury to establish within its Financial Crimes Enforcement Network a highly secure electronic network through which reports (including SARs) may be filed and information regarding suspicious activities warranting immediate and enhanced scrutiny may be provided to financial institutions.

Sunset Provision:

The Act includes a mechanism for expedited repeal of the Act if Congress in the future determines that the provisions of the Act are no longer necessary. After September 30, 2004, Congress may terminate the effect of all provisions of the Act, and any regulations promulgated there under, by enacting a joint resolution to that effect.